

TEXT OF PROPOSED REGULATIONS

In the following text, underline indicates adopted or amended text and ~~strikethrough~~ indicates deleted text.

3378. Documentation of Critical Case Information.

Subsections 3378(a) through 3378(c)(2) are unchanged.

Subsections 3378(c)(3) through 3378(c)(4) are amended to read:

(3) A member is an inmate/parolee or any person who has been accepted into membership by a gang. This identification requires at least three (3) independent source items of documentation indicative of actual membership. Validation of an inmate/parolee or any person as a member of a prison gang shall require ~~that~~ at least one (1) source item be a direct link to a current or former validated member or associate of the gang, or to an inmate/parolee or any person who is validated by the department within six (6) months of the established or estimated date of activity identified in the evidence considered.

(4) An associate is an inmate/parolee or any person who is involved periodically or regularly with members or associates of a gang. This identification requires at least three (3) independent source items of documentation indicative of association with validated gang members or associates. Validation of an inmate/parolee or any person as an associate of a prison gang shall require ~~that~~ at least one (1) source item be a direct link to a current or former validated member or associate of the gang, or to an inmate/parolee or any person who is validated by the department within six (6) months of the established or estimated date of activity identified in the evidence considered.

Subsections 3378(c)(5) through 3378(c)(6)(B) are unchanged.

Subsections 3378(c)(6)(C) through 3378(c)(6)(E) are amended to read:

(C) All source items referenced in the validation or inactive status review shall be disclosed to the inmate/parolee at the time of notification. The inmate/parolee shall be given copies of all non-confidential documents unless otherwise requested in writing by the inmate/parolee. Confidential information used in the validation or inactive status review shall be disclosed to the inmate/parolee via a CDC Form 1030 (Rev. 12/86), Confidential Information Disclosure Form.

(D) The interview shall be documented and include a record of the inmate's/parolee's opinion on each of the source items used in the validation. Staff shall record this information and provide a written record to the inmate/parolee within fourteen (14) calendar days and prior to submission of the validation package to OCS.

(E) The documented interview shall be submitted with the validation package to the OCS for consideration to approve or reject the validation. The documented interview shall be submitted with the inactive status review to the OCS for consideration of the inmate's/parolee's continued current active or inactive status.

Subsections 3378(c)(6)(F) through 3378(c)(8)(A) are unchanged.

Subsection 3378(c)(8)(B) is amended to read:

(B) Tattoos and symbols. Body markings, hand signs, distinctive clothing, graffiti, etc., which have been identified by gang investigators as ~~begin~~ being used by and distinctive to specific gangs. Staff shall describe the tattoo or symbol and articulate why it is believed that the tattoo or symbol is used by and distinctive of gang association or membership. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

Subsection 3378(c)(8)(C) is unchanged.

Subsection 3378(c)(8)(D) is amended to read:

(D) Photographs. Individual or group photographs with gang connotations such as those which include insignia, symbols, or validated gang affiliates. The date of a photograph shall be reasonably ascertained prior to any photo being relied upon for inclusion as a source item. No photograph shall be considered for validation purposes that is estimated to be older than six (6) years. Any photograph being utilized as a source item that depicts gang members and/or associates shall require that at least one of the individuals be previously validated by the department, or validated as a member or associate of the gang by the department within six (6) months of the photograph's established or estimated date or origin. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

Subsection 3378(c)(8)(E) is unchanged.

Subsection 3378(c)(8)(F) is amended to read:

(F) Other agencies. Information evidencing gang affiliation provided by other agencies. Verbal information from another agency shall be documented by the staff person who receives such information, citing the ~~course~~ source and validity of the information. Staff shall document and disclose this information to the inmate/parolee in a written form that would not jeopardize the safety of any person or the security of the institution.

Subsections 3378(c)(8)(G) through 3378(f) are unchanged.

Subsection 3378(g) is amended to read:

(g) The procedures relating to the initial validation or rejection of gang members or associates as described in this section shall be followed when reviewing the present status of an inactive gang member or associate. Verification of an inmate's/parolee's active status shall be approved or rejected by the chief, OCS, or a designee. This determination shall be forwarded for placement in the inmate's/parolee's central file.

Subsection 3378(h) is unchanged.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; Sandin v. Connor (1995) 515 U.S. 472; Madrid v. Gomez (N.D. Cal. 1995) 889 F.Supp. 1146; Toussaint v. McCarthy (9th Cir. 1990) 926 F.2d 800; Toussaint v. Yockey (9th Cir. 1984) 722 F.2d 1490; and Castillo v. Alameida, et al. (N.D. Cal., No. C94-2847).